

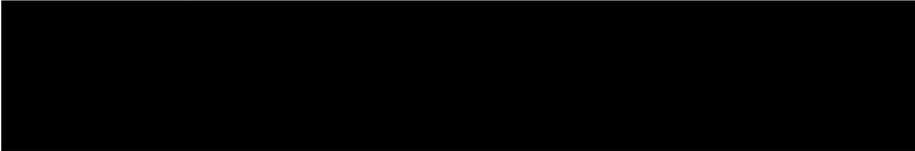
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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY



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FILE: WAC 03 249 50469 Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a consortium of five medical clinics, employing 51 individuals, with a gross annual income of \$2.6 million. It seeks to employ the beneficiary as an accountant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition because he determined the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) previous counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B, with current counsel's brief and new and previously submitted documentation. The AAO review the record in its entirety before issuing its decision.

The record indicates that the beneficiary was previously granted H-1B status for the period January 17, 2003 to October 10, 2005, and that, subsequent to the September 3, 2003 filing of the Form I-129, she began her employment with the petitioner under the portability provisions of section 105 of the American Competitiveness in the Twenty-First Century Act of 2000, section 214(n) of the Act, 8 U.S.C. § 1184(n).

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s August 26, 2003 letter of support; and a job description for accountant included in prior counsel’s May 24, 2004 response to the director’s request for evidence. As described by the petitioner at the time of filing, the duties of the proffered position would require the beneficiary to:

- Record and analyze financial information, and prepare profit and loss statements for each accounting period;
- Perform internal auditing to prevent and correct discrepancies between actual billing submitted to insurance companies and actual payments received;
- Prepare management operation reports, monthly budget, cash flow projections, balance sheets reflecting assets, liabilities and capital;
- Evaluate and analyze past and present operations for effectiveness, efficiency, and conformity with goals and policies;
- Be responsible for performance evaluation, cost and asset management;
- Hire accounting clerks for the accounting department, as necessary;
- Initiate or introduce a new computer system, if necessary, to facilitate billing, accounting and payroll systems; and
- Be responsible for handling all tax matters, including compliance with all federal, state and local laws and regulations and analyze, report and advise the petitioner’s management on tax liabilities and consequences.

In response to the director's request for evidence, previous counsel submitted a job description for the position of accountant that expanded upon the duties just described, indicating that the beneficiary would also be required to maintain and update files for business permits, taxes and licenses; office and car insurance, car registrations, loans and mortgage documents, and property and payroll tax returns and remittances. The description further stated that the beneficiary's duties would include paying property and payroll taxes; filing withholding tax returns; preparing monthly reports on sales analysis, the aging schedule of accounts receivable and payable, and collections; and preparing the payroll for all five clinics.

On appeal, the petitioner submits a July 19, 2004 letter from its certified public accountant that raises questions regarding the petitioner's assertion, at the time of filing, that the beneficiary would be responsible for handling all its tax matters. The petitioner's certified public accountant indicates that she has prepared the consortium's federal and state tax returns for the past seven years and identifies the beneficiary as having been helpful to her by compiling financial information. She states that the beneficiary has been instrumental in preparing the petitioner's quarterly filings, that she has analyzed various monthly expenditures and revenue reports and made recommendations regarding them, and has also evaluated statistical and financial data for a range of cost reports. These statements do not indicate that the beneficiary, as stated by the petitioner, would handle all the petitioner's tax matters. Instead, it would appear that the petitioner's certified public accountant has been and will remain responsible for much of the work related to its taxes. Accordingly, the AAO will not accept the petitioner's description of the proffered position's tax-related responsibilities. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The petitioner has identified its proffered position as that of an accountant. Therefore, the AAO turns first to the 2004-2005 edition of the *Handbook* and its discussion of this occupation.

As stated at pages 68-69 of the *Handbook*, job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is that of management accountants, who:

[r]ecord and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would require the beneficiary to have an understanding of accounting principles. However, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. The question is not whether the petitioner's position requires knowledge of accounting principles but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting. To make this determination, the AAO considers the petitioner's business operations.

While the size of a petitioner's business operations is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In cases where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to establish that the proffered position's accounting duties would require a level of knowledge obtained only through a baccalaureate degree in accounting or its equivalent.

In the instant case, the record establishes the petitioner as a group of five medical clinics working in partnership with California businesses to provide a range of healthcare services to their employees, but which specializes in the treatment of injuries or conditions involving workers' compensation. The size of its business operations – 51 employees and \$2.6 million in gross income – is not independently documented in the record.

At the time of filing, the petitioner attributed its need for an accountant, in part, to the federal, state and other regulatory requirements imposed on its operations, as well as the laws and regulations pertaining to the medical and health issues with which it deals. It contended that to perform the duties of the proffered position, the beneficiary would be required to review and analyze the various legal constraints on its operations, work that could not be performed by an individual who did possess at least a baccalaureate degree.

On appeal, the petitioner relies on the complexity of its financial operations to support its need for a degreed individual. It asserts that the billing and collection cycle for the group is costly, fragmented and labor-intensive, resulting in low collection rates, aged accounts, bad debts, and massive write-offs. As proof of the extent of the group's billing activities, it submits copies of the June 2004 accounts receivable listings from all five clinics. The petitioner also describes a need for each of the group's clinics to be financially analyzed and to be provided with unique financial solutions related to their specific operational needs. As proof that the complexity of its operations requires an accountant, the petitioner references the previously discussed July 19,

2004 letter from its certified public accountant who states that bookkeepers hired by the petitioner in the past have been unable to handle the accounting duties associated with the petitioner's business operations and that it is on her recommendation that the petitioner has sought a degreed individual to perform these tasks. However, neither the petitioner's statements, nor the letter from its tax accountant establish the nature of the petitioner's operations for the purposes of these proceedings.

The statements made by the petitioner regarding the complexity of its business operations are unsupported in the record. The petitioner has provided no evidence of the type of legal/regulatory review and analysis to be performed by the beneficiary in the course of her duties. Beyond providing copies of its accounts receivable listings for its clinics, it has not documented the multiple billing and collection processes that it indicates require attention, nor has it offered proof of the unique financial situations that it states characterize its clinic operations. Going on record without supporting documentation is insufficient for meeting the petitioner's burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The letter from the petitioner's tax accountant does not discuss the nature of the petitioner's business operations. It indicates only her dissatisfaction with the work performed by the petitioner's previous bookkeepers and her support of the petitioner's need for an individual with an accounting degree.

However, despite these deficiencies in the evidence of record, the petitioner has established its proffered position as that of an accountant. The marketing/informational brochures submitted by the petitioner, when combined with the copies of the business license tax receipts/certificates and business tax certificate provided for four of the petitioner's five clinics, provide sufficient evidence to establish the petitioner as a business overseeing the operations of multiple medical clinics. Therefore, despite the relatively small size of its business operations, the AAO finds the petitioner's responsibility for managing multiple medical operations to be adequate proof that it will employ the beneficiary as an accountant. Accordingly, the petitioner has established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO notes, however, that the duties described by the petitioner, if performed for only one of the petitioner's clinics, do not appear to require accounting knowledge beyond that held by bookkeepers or junior accountant positions, employment that does not impose a degree requirement on those seeking entry-level employment. It is only when combined with the complexity imposed by the petitioner's multiple business operations that the duties of the proffered position require a level of knowledge that can be acquired only through a baccalaureate degree in accounting or its equivalent.

The AAO now turns to the record before it to determine whether the beneficiary is qualified to perform the duties of the proffered position.

To prove that a beneficiary is qualified to perform the duties of a specialty occupation, a petitioner must establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

At the time of filing, the petitioner submitted evidence to establish that the beneficiary holds a foreign degree that is the equivalent of a U.S. baccalaureate degree in accounting. Documentation of the beneficiary's qualifications includes copies of the beneficiary's diploma from the Philippine School of Business Administration documenting the beneficiary's 1996 bachelor of science degree in accounting, the beneficiary's academic transcripts, an evaluation of the beneficiary's educational credentials by Educational Evaluators International, Inc., and the beneficiary's 2000 accountancy certification by the Board of Accountancy of the Philippine Professional Regulation Commission. The credentials evaluation provided by Educational Evaluators International, Inc. finds the beneficiary's degree in accounting to be the equivalent of a baccalaureate degree, with dual majors in accounting and business administration, awarded by a regionally accredited college or university in the United States.

Having reviewed the documentation provided by the petitioner, the AAO accepts the evaluation prepared by the Educational Evaluators International, Inc. It finds the petitioner to have established that the beneficiary holds a foreign degree that is equivalent to a U.S. baccalaureate degree required by the proffered position. Therefore, the petitioner has established the beneficiary as qualified to perform the duties of a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

For the reasons previously discussed, the petitioner has established both that the proffered is a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the petitioner's appeal is sustained and the director's decision withdrawn.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

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**ORDER:** The appeal is sustained. The petition is approved.